

71-2)
1500/133 16th

PET. WILLIAM CRAIG,
AGAINST
Lord BRAXFIELD's Interlocutor. }



NOVEMBER 21. 1786.

UNTO THE RIGHT HONOURABLE

THE LORDS OF COUNCIL AND SESSION,

THE

P E T I T I O N

OF

WILLIAM CRAIG, Timber-merchant in
Glasgow;

HUMBLY SHEWETH,

THAT the petitioner takes the liberty of submitting to your Lordships review, certain interlocutors of the Lord Braxfield Ordinary, in a question between the petitioner and James Clyde, cork-cutter in Glasgow, respecting the petitioner's conduct in the management of a bankrupt estate. The circumstances which gave rise to the dispute are as follows.

In the beginning of the year 1783, John Clyde, farmer at Barrowfield-bridge, father of James Clyde, the party in this cause, declared himself a bankrupt. Though it was then thought, and has since appeared, that his subject was fully sufficient for the payment of his debts, yet Mr Clyde was not disposed to let it be applied for that purpose; and the creditors, to prevent trouble

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and greater loss, by the expence of legal diligence upon a small property, were glad to accept of a composition of 15 s. *per* pound, payable in two moieties, at Whitsunday 1784, and Whitsunday 1785. Accordingly, a bond was granted by John Clyde and James Clyde his son, as his cautioner, for payment of the composition in these terms; and, in further security, a disposition was granted to the petitioner, for himself, and as trustee for the creditors therein named, of a piece of ground, and house built thereon, lying in Blackfauld, near Glasgow. By this deed, it is declared, "That the said lands shall not, in any shape, be sold or
 " disposed of, except in the event of failure in making punctual
 " payment of the foresaid composition of 15 s. *per* pound, at the
 " terms above specified: But, in case of my failure to make
 " punctual payment of the foresaid 15 s. *per* pound, of the said
 " several debts, at the terms of payment above mentioned, then,
 " and in that case, the said William Craig and his foresaids shall
 " have full power and liberty, so soon thereafter as they shall
 " judge convenient; and I hereby authorise them, to roup and sell
 " said lands, the roup and sale always being previously advertised,
 " at least three days, in the Glasgow newspapers; and to uplift the
 " prices thereof, and to apply the same, with the intervening rents
 " which may be levied out of the said lands, *first*, Towards pay-
 " ment of the public burdens, feu-duties and casualties of superi-
 " ority now due by me, and hereafter to become due; of the
 " expence to be disbursed for drawing these presents, passing in-
 " feftment hereon, and defending the ground-right and property
 " of the said lands, and of the right and conveyance to the pur-
 " chaser, all to be ascertained by the word or oath of the said
 " William Craig or his foresaids: *Secondly*, In payment of the
 " foresaid sum of 15 s. *per* pound of composition, or what part
 " thereof may be remaining unpaid, in case any part thereof
 " should have been previously paid by me; and, *lastly*, As it is
 " understood that the said 15 s. *per* pound is to be received by the
 " said creditors, in full of their debts, the said William Craig and
 " his foresaids shall be accountable to me for the residue, if any
 " be."

Another clause of this deed provides, "That on payment being
 " made by me, of the foresaid sum of 15 s. *per* pound, of compo-
 " sition, at the terms above specified, and interest of the one-half
 " thereof, after Whitsunday next, and also of the feu-duties and
 " public burdens which have been already paid out by the said
 " William

“ William Craig, on account of the said lands, with the expences
 “ to be disbursed in making and completing the present right by
 “ infestment, the said creditors shall not only be obliged to dis-
 “ charge me of the debts severally owing to them, but also, the
 “ said William Craig, or his foresaids, by acceptance hereof, shall
 “ be obliged, at their expence, to denude and divest themselves
 “ of their property in the said lands, by redispensing the same to
 “ me and my foresaids, with warrandice from their facts and
 “ deeds only.” This disposition is dated 19th June 1783; and
 the petitioner was, in consequence thereof, infest in the subjects,
 on the 25th of July thereafter.

It was with extreme difficulty that Mr Clyde could be prevail-
 ed upon to grant even this conveyance, incomplete as it was; and
 the first time the trustee attempted to take infestment, the notary
 and witnesses were pelted with stones, by Mr Clyde's family, and
 fairly put to the rout. Your Lordships will readily suppose, that
 this unwillingness of the bankrupt to make a voluntary surrender
 of his subject, in security of his whole debts, could make no very
 favourable impression of him upon his creditors.

The first half of the composition became due at Whitfunday
 1784, almost a year after the trust-disposition; but no payment
 was then made, or offered to the trustee, in terms of that deed;
 and, upon enquiry, it appeared, that the debtor had been making
 small payments to trifling creditors, on condition of their join-
 ing in a request to the petitioner to delay the sale, which might
 have been brought on in terms of the trust-deed, in consequence
 of the bankrupt's irregular conduct in the payment of the first
 moiety. Such underhand management strengthened those un-
 favourable impressions of the bankrupt, which had arisen from
 his breaking with a full hand, and compounding for his debts,
 when his subject was able to answer them.

The petitioner, though he had surely reason to be displeased,
 yet, far from being disposed to act with rigour, put off the
 roup at the debtor's request, and waited till the second moiety
 became due. At this time, payment of no part having ever
 been offered to him, or indeed to any of the principal creditors,
 his duty to himself and to the other persons for whom he was
 trustee, obliged him to advertise the subject for sale. This he
 did accordingly, upon the 1st of July 1785, after both moieties
 were due and unpaid, except a mere trifle to one or two small
 creditors,

creditors, the principal creditors being totally overlooked. It has been alleged, that this step was taken without consulting the other creditors ; but the allegation is totally groundless ; it was a measure the petitioner was repeatedly pressed and solicited to adopt.

The disposition requires, that the roup shall be advertised for three several days ; but the petitioner took care to have it advertised in all the Glasgow newspapers for *four several weeks*. During all that time, Mr Clyde the debtor made no objection to it ; and it appears, from his own productions since made, that not the smallest payment was made to any one creditor during the period that intervened between Whitsunday 1785, when the last moiety was payable, and the first of July, the day of the roup. The petitioner besides understood, that the subject would at that time bring a very high price, owing to a particular view entertained by the neighbours with regard to it, and that there would be a considerable degree of competition for it.

It was accordingly exposed to sale on 1st July, under written articles ; one of which is, “ That the purchaser shall be obliged, “ within ten days after the roup, to find undoubted security to “ make payment of the price to the exposer, at the term of Martinmas next, with interest from the term of entry till payment, and a fifth part more of the price in name of penalty, “ in case of failure ; and, on the purchaser’s failing to find such “ security, he shall not only forfeit his purchase, but also a fifth “ part of the price offered, in name of penalty, subject to no “ kind of deduction whatever.” And, by another clause in the articles of the roup, it is provided, “ That in case of more offers “ than one, and that the person preferred shall fail to find or “ grant security, as aforesaid, it should be competent to the “ exposer, of new, to expose the subject above described, or, “ in his option, the next and immediately preceding offerer shall “ be bound, within ten days after notification of such failure, “ not only to grant security in manner foresaid, for the sum or “ price offered by him, but he shall also be liable in the like penalty and forfeiture, in case of his failure so to do, and so forth “ through the whole of the offerers backward in order, shall “ such notification be made, till caution is found, and the whole “ articles implemented ; declaring, That the exposer shall have it “ in his power to insist upon any one of the offerers for implementation and performance of the articles, as he thinks fit.”

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At the roup, appeared James Clyde, son of the bankrupt, and pursuer in this process, who, instead of offering payment of the debt, became a bidder for the subject. The view of this manœuvre appeared from the beginning to the petitioner, in the light in which it now turns out, as a scheme to defeat the trust-disposition; the offerer, James Clyde, a journeyman cork-cutter, being nowise responsible for the price of such a subject. And the way in which he conducted himself, put the matter beyond a doubt. Your Lordships will see, by the minutes of roup in process, that the upset price was L. 140, which was reckoned by most people the utmost value that the subject could bear. But the neighbouring proprietors appearing, and the debtor's son bidding against them, the price rose by moderate offers of 20s. to L. 161, when James Clyde, resolving to disappoint the roup at all events, bid L. 9 at once: Andrew Ure bid L. 1 more: James Clyde offered L. 9 more; which made the price L. 180. Andrew Ure went 20 s. above him; but James Clyde, by another offer of L. 9 more, clearly got the start of all his competitors, and was preferred to the subject at the price of L. 190 Sterling.

The petitioner waited the ten days allowed by the articles of roup for finding caution, which expired on the 11th of July. On that day intimation was made to James Clyde, under form of instrument, that he must find caution, or forfeit his purchase. Some time after, on the same day, Clyde came to the petitioner, accompanied by a notary and witnesses, and two men, whom he called Thomas Clyde, near Barrowfield-bridge, and Robert Mastertown, cork-cutter in Glasgow, whom he offered as cautioners for the price. They were strangers to the petitioner, who therefore declined accepting them, until he made enquiry into their circumstances; and upon subsequent enquiry, which was made without delay, he found they were totally inadmissible in that capacity.

When the petitioner declined accepting the cautioners, James Clyde then offered to consign the debt due to William Muir, brick-maker in Calton, and to grant a bill with cautioners for the sum due to the petitioner himself; meaning by this offer, as it would now appear, though not expressed in the protest, that the complainer should immediately redispone the subject to the debtor, as it was said, all the debts but these two were settled and paid. No evidence however was shewn or offered, that this averment, with regard to the payment of the other debts was true; and the petitioner shall afterwards show your Lordships, from written evidence produced by James Clyde himself, that it was false. This part of the alter-

native, the petitioner did not think he could accept, either with safety to himself or his constituents.

After this transaction, the petitioner waited three days before he took any further measures. During that time he enquired into the circumstances of the cautioners offered, and found them perfectly insufficient. And during these three days, no further explanations were made by Mr Clyde upon the subject. Upon considering, therefore, in what manner he should exercise the option vested in him by the articles of roup, he judged it most expedient to betake himself to the immediate preceding offerer, who was Andrew Ure, merchant in Glasgow, a person of good credit and circumstances, and who had made an offer of L. 181. It occurred, that if a new roup had been attempted, it not only would have been attended with double expences of sale, but would have been exposed to the farther machinations of Clyde, whose design was to prevent the trust-right from being carried into execution. He accordingly, three days after the time for finding caution had expired, made offer of the subject to Mr Ure, who accepted, and granted bond for the price, and the petitioner thereby became bound to dispoise the subject to him.

July 14. 1785.

On the same day in which this transaction was finished with Andrew Ure, James Clyde, having, it seems, heard of what was going on, and being resolved to prevent the petitioner from executing the trust, came to make another offer, under form of instrument, (which he did to the petitioner's clerk, in his absence,) of about L. 66, 6s: Sterling, in payment of his and William Muir's debts; and demanded a reconveyance in favour of him or his father. This offer and demand were as inadmissible as the others; for the petitioner could not, consistently with his duty, take payment to himself, and surrender the subjects he was entrusted with to the debtor, while not a scrap of evidence was shewn, that the ends of the trust were fulfilled, or that any one of the creditors was paid either his debt or composition; which, indeed, was not the case.

On the 18th of July, four days after the transaction with Mr Ure was closed, by taking his bond, a petition was presented by James Clyde to the Sheriff of Lanerk, stating, that the lands had been sold to him at the roup, and that he had made two offers to the petitioner, under form of instrument, as already noticed; and praying, "on proof of the facts therein set forth, and the petitioner's paying his, (the trustee,) and William Muir's debts,"
" to

“ to ordain him to redispone the said subject, either to the petitioner, or to the said John Clyde.” Answers were given in to this petition, in consequence of an appointment of the Sheriff; and upon advising them with replies for Clyde, the following interlocutor was pronounced: “ Having again considered this Aug. 10. 1785.
 “ petition, answers and replies, and writings produced, appoints the petitioner to consign, in the hands of the clerk of court, as much money as will satisfy the debts due to the respondent and William Muir; and, upon his doing so, ordains the respondent to convey the subjects, within mentioned, to the petitioner, in terms of the articles of roup.” Against this judgment, the petitioner preferred a reclaiming petition, which having been answered, the Sheriff-substitute was pleased, on the 26th of August, to pronounce this other interlocutor: “ Having considered this petition, with answers and former steps of process; in respect the petitioner has produced Aug. 26. —
 “ evidence, that all the creditors, specified in the trust-disposition, are satisfied of their debts, except the defender, William Muir, William Rodger, and James White; and as it is averred by the petitioner, and not denied by the respondent, that Rodger’s debt is suspended, and that James White never acceded to the trust-deed, Finds that the respondent, on being paid the debt due him and William Muir, must denude himself of the subjects in favour of the petitioner, the petitioner always finding caution to indemnify the respondent of any demand which Rodger and White may afterwards make upon him; and ordains the respondent to produce a state of his debt, and of that due to William Muir, within four days after this interlocutor is intimate; and, with this explanation, adheres to the interlocutor reclaimed against.”

Upon examining the evidence referred to in this interlocutor, it appeared to be very different from what it ought to have been, (as to which a few words shall be said in the sequel), and a new petition was given in, craving the Sheriff-depute’s opinion, who was pleased, on the 12th of October, to give the following judgment: “ Having considered this petition with the answers, former proceedings, and writings produced, and that it does not Oct. 12. —
 “ appear from the articles of roup, that upon failure of the first offerer to find sufficient caution, the second offerer acquired any unconditional right to the purchase of the subject in question; but, on the contrary, that the conferring such a right upon him, was entirely optional to the defender, who appears, whatever
 “ were

“ were his motives, to have acted rigorously and precipitately
 “ in this affair, Refuses the desire of the petition, and adheres to
 “ the interlocutor reclaimed against; reserving to the defender
 “ action of relief against the pursuer, in the event of a process for
 “ damages being brought against him by Andrew Ure, and re-
 “ serving to the pursuer all competent defences.”

The petitioner feeling himself hurt by this judgment, as it ordains him to redispone the lands, in consequence of which he becomes exposed to an action of damages at the instance of Andrew Ure, while he has no security, in case of such an action being brought, except a personal action against James Clyde; but particularly, being hurt by the reflections upon his conduct in the capacity of trustee, obtained an advocacy: But, at a hearing, was not able to impress the Lord Ordinary with the view he entertains of the question; and the following interlocutor was pronounced: “ Having heard parties procurators at great length,
 “ Repels the reasons of advocacy, and remits the cause, in common form; finds no expences due to the defender in the advocacy.”

June 27. 1786. And upon a representation and answers, his Lordship, of this date, pronounced as follows: “ Having considered this representation, with answers and representation for James Clyde, finds
 “ James Clyde entitled to the expence of his answers, which modifies to three guineas; finds him also entitled to the expences of extract; and, with these variations, refuses the desire of both representations, and adheres to the former interlocutor; and
 “ declares he will receive no more representations; but supercedes extract till the third federunt day of November next.”

As the petitioner is not convinced, that he could have acted any otherwise than he did, in the circumstances of the case, he must humbly take the liberty of submitting these interlocutors to your Lordships review.

And here, in the *first* place, it seems proper to throw entirely out of the question all transactions between the petitioner and James Clyde, posterior to the 11th of July, when it was incumbent on that gentleman to find caution, in terms of the articles of roup. If it appears that James Clyde did not obtemper these articles before, or upon the 11th of July, there can be no doubt, that the trustee acquired a right to give the purchase to the next offerer.

It is of no consequence, if, *posterior* to that date, the bankrupt had gone about, and made payments or compromises with some of his creditors.

creditors. Much less can the present question be affected by any transaction which took place, or which came to the petitioner's knowledge posterior to the bargain with Andrew Ure: For after this time, matters were no longer entire; the pursuer had failed on his part; the trustee had, in consequence thereof, exercised his option; and Andrew Ure had acquired a right to obtain a disposition of the subject from the petitioner.

In this view, the offer of L. 66, 6 s. (which was made to the petitioner's clerk on the afternoon of the 14th of July, the same day on which the transaction with Mr Ure was closed), as payment of the petitioner and William Muir's debts, which were falsely alleged to be the only claims outstanding, may be set entirely out of the question. This offer was, besides, inadmissible in itself, no evidence being produced that the other debts (besides Muir's and the petitioner's) were extinguished, not one of the receipts afterwards produced having been ever shown to the petitioner, till several weeks after, in the course of the process before the Sheriff.

The sum of L. 66, 6 s. besides, was not adequate to the debts of Muir and the petitioner; and it was false, that these were the only debts outstanding. The petitioner's claim, vouched by a bill herewith produced, amounts to L. 41 : 9 : 9½. To this must be added L. 16 of feu-duties paid by him to the superior, and the expence of the trust, which cannot be less than L. 10; in all L. 67 : 9 : 9½. Muir's debt amounts to L. 18 Sterling. And there were other debts subsisting besides these; particularly that of William Rodger by bill, amounting to L. 12, 5 s. with others which have been extinguished, but, it is believed, posterior to this period.

It seems, however, in fact, totally immaterial to the question, whether this offer was adequate or not. It was made three days after the 11th of July, when it was incumbent on James Clyde to have found caution for the price of the lands, and consequently when, by the articles of roup, the petitioner had acquired a right, if he chose, to dispose the lands to the next highest bidder. Nay, farther, it came to the knowledge of the petitioner, after he had closed the transaction with Mr Ure, and taken his bond.

The present question must therefore rest upon the validity of those offers which were made by James Clyde on the 11th of July.

And, *first*, with regard to his offer of consigning a sum equal to Muir's debt, and granting bill and security for that of the petitioner. This proposal was inadequate and inadmissible. For, in the *first* place, no evidence was produced or offered, that the other debts

were extinguished or paid. The petitioner surely was not to take a thing of this kind upon Mr Clyde's bare averment. And if he had done so, he would have been egregiously deceived; for there is now evidence in process, that this averment was a direct falsehood. Almost every payment that has been made to any of the creditors, has been made since the offer.

The trust-deed is granted in behalf of the following creditors, viz.

William Craig the petitioner.

William Muir brickmaker.

William Rodger mason.

James Bell maltman.

John Horn farmer in Glasgow.

James White ironmonger.

John Thomson hammerman.

John Mackechnie merchant, in right of others.

Of these, William Rodger's debt, amounting to L. 12, 5 s. by bill, is unpaid to this day. This claim was erroneously stated to the Lord Ordinary, as amounting only to 20 s. and was said to be under suspension. The fact as to this is, that instead of the debt being under suspension, a list merely had been obtained, as far back as 6th November 1784, and the bill was never passed, or so much as returned to the bill-chamber. Of the validity of Mr Clyde's grounds of suspension, the petitioner certainly was not a competent judge.

James Bell acknowledges the receipt of L. 3 : 10 : 5, as the composition on a bill of L. 4 : 11 : 6. But this acknowledgment is dated on the 13th of July, two days posterior to the offer and averment in question.

John Horn, by a writing dated so late as *the 22d of July*, four days after the process commenced before the Sheriff, and eleven after the offer, acknowledges "he is satisfied of his debt." We are not informed how or when he was satisfied.

James White, a creditor, whose debt is stated by Clyde at 50 s. was not satisfied at the date of the offer. With regard to him, it is said, that he had never acceded to the trust. The fact is, there had been no deed of accession signed by any of the creditors, more than by White. It is said, that White has received payment of the composition *since the cause came into this Court*.

Lastly, John Mackechnie, whose claim, *in right of others*, is said to have been greater than that of any other creditor, but whose grounds of debt could never yet be seen, grants an acknowledgment to the same purpose, so late as the 26th July. This acknowledgment of

John

John Mackechnie, the petitioner has, after all, every reason to consider as an unfair and collusive transaction. It would be going out of the cause to state the petitioner's idea of John Mackechnie's interest in this affair; but he cannot help taking notice of the manner in which this gentleman's acknowledgment is expressed. He says, that James Clyde "had *long ago* got up all the documents of debt "I had against him." If this was the case, was it not easier for the bankrupt to produce these retired documents to the trustee, prior to the sale, or even to the 11th of July, than, so late as the 26th, to get a written declaration, importing, that the documents had, at a prior date, been given up. If the documents were actually given up, what was the use at all of John Mackechnie's acknowledgment?

It is of no consequence that some of these debts were small. The petitioner, in his capacity of trustee, was bound to attend to the interest of the smallest creditor; and he was not at liberty to desert the security afforded him by the trust-deed, until evidence was presented to him, that not one fixpence remained due by the bankrupt. Nay the petitioner humbly conceives, that had he accepted of the offer made him, of either payment, or security of his *own debt*, while he had reason to suppose, that any other creditor remained unsatisfied, such conduct in a trustee would have afforded room for a very gross imputation,—that he had betrayed his constituents.

But this is not all. The trust-deed was granted, in the first place, towards the extinction of the feu-duties, and other burdens upon the land, and for payment of the expences of the trust: A sum amounting to about L. 25 or L. 30 Sterling. With regard to this, no offer of payment or security was made; and the proposal, therefore, was in this respect likewise inadequate; nor has the smallest offer yet been made to settle these debts and expences.

But still farther, James Clyde's proposal was insufficient in relation to the petitioner's own debt. For, though Mr Clyde offered payment of William Muir's debt, he offered only bill and caution for the petitioner's, payable at a future day. Considering the conduct and views of Mr Clyde, in the light the petitioner did, as unfair and fraudulent, he readily supposed what sort of caution would be given him; and as he was now in a situation to obtain payment to himself and the rest of the creditors, upon demand from Mr Ure, there was no reason why he should resort to any new and inferior security.

The offer made by Mr Clyde of caution, in terms of the articles of roup, was more regular, and seems, indeed, to have been

the only sort of proposal, which it was incumbent on the trustee to pay any attention to.

But here, again, the cautioners offered were totally irresponsible; and this the petitioner *offers and undertakes to prove*. The fact can scarcely be otherwise, one of them being a common day-labourer, and the other a cork-cutter's apprentice. Indeed, by Mr Clyde afterwards making an offer of money, instead of getting these cautioners attested, it is clear what was that gentleman's own opinion of their responsibility.

Much stress has been laid upon the expression said to have been used by the petitioner, upon refusing the cautioners, "that he" "was not acquainted with the cautioners, besides the time for" "finding caution was elapsed." But it is easy to see, that these expressions are an incomplete statement of the conversation. There surely must be some mistake, in supposing the petitioner to have said, that he considered the time for finding caution as elapsed, when *a very short time before, on the same day, he had required, under form of instrument, that Clyde should find caution*. This proves, that the petitioner could be under no such error, with regard to the time being elapsed; and had Clyde then, or within three days after, produced security, he would have got the subject conveyed to him; for it was not till the 14th that Mr Ure's bond was taken, after the petitioner had given over thoughts of hearing more from Clyde upon the subject.

But it is of no consequence, upon what idea he had originally refused the cautioners, provided it can be shown, that the measure itself was right. And of this your Lordships can have no doubt, when it is proven that they are totally irresponsible.

As neither of James Clyde's offers, therefore, were admissible, it remained for the petitioner to exercise his option. He waited *three days* before he took his resolution; and he then exercised his option for the interest of his constituents, according to his best judgment. He has been accused of precipitancy. But how long was he to wait? Was it for months, or for years? Neither, it is hoped, from the statement above given, will your Lordships be disposed to think the petitioner acted with rigour. The delays granted to any bankrupt, with regard to the rousing of his property, and the favour which a bankrupt is entitled to expect, must always be proportioned to the fairness of his conduct; and a complaint of rigour against creditors for adhering to the strict letter of their right, comes with a very bad grace from one, who refused to surrender his estate for the satisfaction of their whole claims;

claims ; and who will, at this moment, actually draw a reversion from the price of his subject, corresponding to the five shillings a-pound, which he has contrived to short-pay them.

Upon the whole, it is hoped, your Lordships will see the hardship of the petitioner's situation, into which he has been brought without any fault of his own, but solely by following what he considered, and what he still considers, as the precise line of his duty to his constituents. Acting, *bona fide*, without any other connection with Mr Ure than what arose from his offers for the subject, he is, by the Sheriff's judgment, exposed to a claim of damages ; and what he considers as of greater importance, he has been accused of rashness, precipitancy and rigour, and an insinuation has been thrown out against his " motives."

It has been said, that the Sheriff's interlocutor reserves relief to the petitioner against Mr Clyde, in case of an action of damages brought by Mr Ure. But it is imagined, that, as Mr Ure's right originated from the fault of Clyde, in not finding proper caution in due time, it does not lie with the petitioner, but with Mr Clyde himself to encounter such a claim. If Mr Ure shall agree to depart from the bargain, the petitioner has not the smallest interest or inclination to refuse redispensing the subject. But he humbly conceives, that he ought not to be made liable in the first place, and obliged to trust for his recourse to a man in Clyde's circumstances.

The petitioner hopes your Lordships will see cause to assilzie him from this process altogether, upon his proving, that the cautioners offered by Clyde were not responsible ; or, at least, that you will allow Mr Ure to be called in this action, that Mr Clyde and he may dispute their right to the purchase : That you will find the petitioner was acting according to the strict line of his duty, and is entitled to be freed from all charges in consequence of it.

May it therefore please your Lordships, to alter the interlocutors complained of, advocate the cause, assilzie the petitioner, and find him entitled to his expences.

According to Justice, &c.

JOHN MILLAR, *junior*.

...and who will pay this money, actually, how a security from the price of his subject, corresponding to the five hundred pounds, which he has contrived to keep them. Upon the whole, it is hoped, your Lordships will see the hardship of the petitioner's position, into which he has been brought without any fault of his own, but solely by following what he considered, and what he still considers, as the precise line of his duty to his constituents. Acting, however, without any other consideration with Mr. Ure than what arose from his offer for the subject, he is, by the Court's judgment, exposed to a claim of damages; and what he considers as of greater importance, he has been accused of having, by his conduct, and the manner in which he has been shown out against his "manoeuvres."

It has been said, that the Sheriff's Inspector reserves to the petitioner against Mr. Clyde, in case of an action of damages brought by Mr. Ure. But it is imagined, that as Mr. Ure's right is granted from the fact of Clyde, in not finding proper reason in the time, it does not lie with the petitioner, but with Mr. Clyde himself to encounter such a claim. If Mr. Ure shall agree to depart from the bargain, the petitioner has not the smallest interest or inclination to refuse redressing the subject. But he humbly conceives, that he ought not to be made liable in the full place, and obliged to trust for his recovery to a man in Clyde's circumstances. The petitioner does not your Lordships will see cause to withdraw from this process altogether, upon his knowing, that the answers offered by Clyde were not responsible; or, at least, that you will allow Mr. Ure to be called in this action, that Mr. Clyde and he may dispute their right to the purchase. That you will find the petitioner was acting according to the strict line of his duty, and is entitled to be freed from all charges in consequence of it.

That I therefore beg your Lordships, to order the petitioner to be placed at liberty, without the costs, and that the petitioner, and his counsel be entitled to the expenses.

According to Justice, etc.

JOHN MILLAR, Esq.

